

In the Matter of N.R.
DOP Docket No. 2006-1
(Merit System Board, decided December 7, 2005)

N.R., a Supervisor of Patients Accounts 1 with the Department of Human Services (DHS), represented by Cheryl J. Palermo, Staff Representative, CWA Local 1039, appeals the attached decision of the Assistant Commissioner for Human Resources denying her request for a reasonable accommodation.

The record indicated that the appellant suffers from heel spurs and swelling in her legs. Dr. Vijay Shah, a personal physician, stated that, due to these conditions, the appellant should keep her legs elevated as much as possible, avoid staying on her feet for extended periods, and minimize her walking. Based on her condition, the appellant requested a reasonable accommodation in the form of a free parking space in the Marriott Hotel parking garage across the street from her office. Presently, the appellant is provided free parking in the Perry Street Parking Lot with shuttle service from that lot to her office building. Alternatively, the appellant has the option of parking in the Marriott Hotel parking garage for a fee. In her request for a reasonable accommodation, the appellant also noted that she was “able to perform my professional duties as a Supervisor of Patients Accounts 1 and supervise my staff . . . I have no problems performing my job duties.”

The DHS conducted an investigation in the matter and denied the appellant’s request for a reasonable accommodation. Specifically, the DHS noted that it provided the appellant with a parking space at no charge in the Perry Street Parking Lot and transportation to and from her office location via shuttle service. This arrangement does not require the appellant to walk more than one block in a given day. Moreover, the DHS concluded that it was not obligated to accommodate the appellant in her commute to and from work.

On appeal to the Merit System Board (Board), the appellant argues that her need for closer parking arose from documented medical conditions, which inhibit her ability to walk for long periods of time without experiencing pain. She also emphasizes that, in the summer of 2005, over 100 employees at her job location were reassigned to another location, which should have resulted in the release of several free parking permits at the Marriott Hotel parking garage. The appellant also asserts that she often has to leave work on short notice to respond to medical emergencies involving her mother-in-law, who lives with her. Parking in the Marriott Hotel parking garage, as opposed to the Perry Street Parking Lot, would enable her to more timely return home if the need arises. Finally, the appellant claims that she no longer feels safe parking in the Perry Street Parking Lot, since her car has been vandalized on several occasions.

In response, the DHS emphasizes that the appellant's request was appropriately denied because an employer is only required to provide reasonable accommodations to assist employees in their work environment and the performance of the essential functions of their jobs. The DHS reiterates that issues involving commuting and parking are not part of an employee's work environment. In addition, the DHS argues that parking at the Perry Street Parking Lot does not require the appellant to stand or walk for long periods of time. Specifically, upon her arrival in the parking lot, the appellant could then wait for a shuttle in an enclosed waiting area that includes seating. During the morning and evening hours, the shuttle departs from the Perry Street Parking lot every 10 minutes, and the shuttle would drop the appellant off approximately one block from her office. Further, the DHS argues that parking in the Marriott Hotel parking garage will not significantly reduce the appellant's walk to the office. In this regard, parking in this garage is provided on a "first come, first serve" basis for permit holders. The appellant would have to locate parking on one of the seven levels of the garage and take the elevator, located in the northwest corner of the garage. Upon her arrival on the ground level, she would then have to walk to the exit in the southeast corner of the parking garage and walk approximately 50 yards to the entrance to her work location.

With regard to the appellant's additional reasons for requesting parking in the Marriott Hotel parking garage, the DHS contends that these reasons are irrelevant in the context of a reasonable accommodation request. Specifically, the DHS argues that the need to care for a family member on occasion does not implicate the Americans with Disabilities Act (ADA). Moreover, the DHS notes that, following the referenced reassignment of employees from the appellant's building, several more employees were reassigned to this location. Finally, the DHS referred the appellant's safety concerns to its Operations Management office to be addressed.

CONCLUSION

The Board is reviewing this appeal under the authority provided in *N.J.A.C.* 4A:7-3.3(a) that employees in the State career, senior executive and unclassified services who claim unlawful discrimination may appeal such action using the procedures set forth in *N.J.A.C.* 4A:7-3.3. The Board is empowered to decide the appeal on a review of the written record or such other proceeding as it deems appropriate. *See N.J.A.C.* 4A:2-1.1(d). The appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C.* 4A:7-3.3(f).

Under the ADA, 42 *U.S.C.A.* sec. 12101, *et seq.*, the term "reasonable accommodation" means: (1) modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or (2) modifications or adjustments to the

work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or (3) modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities. Reasonable accommodation may include but is not limited to: (1) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and (2) job restructuring: part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training, materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities. *See 29 C.F.R. § 1630.2(o)* (1999).

Further, the ADA requires that, where an individual's functional limitation impedes job performance, an employer must take steps to reasonably accommodate, and thus help overcome the particular impediment, unless to do so would impose undue hardship on the employer. *See 29 C.F.R. § 1630.2(p)*. An accommodation must be tailored to match the needs of the disabled individual with the needs of the job's essential function. The ADA does not provide the "correct" answer for each employment decision concerning an individual with a disability. Instead, the ADA simply establishes parameters to guide employers in how to consider, and to take into account, the disabling condition involved. *See 29 C.F.R. § 1630.2(o)* and *29 C.F.R. § 1630.9*.

In the instant matter, the record shows that the appointing authority could not honor the appellant's request for a free parking permit to the Marriott Hotel parking garage, since the request was unrelated to the appellant's job functions. Rather, it involved her commutation to and from work and parking. Further, although the Board acknowledges the appellant's parking concerns, they are not related to the performance of her position and are personal in nature. In addition, the Board notes that the appellant's current parking arrangements do not require excessive walking or standing, and she is in no way precluded from parking at the Marriott Hotel parking garage, or any other nearby parking facility, for the established fee, if she chooses. In this regard, it is noted that an employee does not necessarily have the right to demand and receive a specific accommodation if he or she can still perform the essential functions of her position. *See e.g., In the Matter of Willene Carroll* (MSB, decided August 10, 2005); *In the Matter of Mary V. Powell* (MSB, decided February 20, 2002). In this case, there is no evidence that the appellant cannot perform the essential functions of her position. In fact, in her request for a reasonable accommodation, the appellant expressed that she was "able to perform my professional duties as a Supervisor of Patients Accounts 1 and supervise my staff . . . I have no problems performing my job duties." As stated above, the ADA does not provide the correct answer for each employment decision

concerning an individual with a disability. Rather, it establishes parameters to guide employers in how to consider, and to take into account, the disabling condition involved. In this case, the appellant has not convinced the Board that the appointing authority's actions were outside of the established parameters and, therefore, she has not satisfied her burden of proof in this matter.

ORDER

Therefore, it is ordered that this appeal be denied.